

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 821 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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CHANDRASINH VIRAMSINH SOLANKI

Versus

SODGAM GROUP VIVIDH KARYAKARI MANDLI LTD.

Appearance:

MR VJ DESAI for Petitioner

MR BA SURTI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Desai is present for the petitioner workman. Learned advocate for the respondent is also present. The facts of the present case, in short, are that the petitioner workman was working with

the respondent Mandali with effect from 1.1.1972 as Jt.Secretary and that his services were terminated by the respondent mandali on 18.10.1979 which order was challenged by the petitioner workman before the labour court in Ref. No. 74 of 1982.Before the labour court, the workman has filed the statement of claim and it was pointed out inter alia that his services were terminated on the basis of some allegations but no departmental inquiry was initiated against him and that he was not given an opportunity before taking the impugned action. The claim of the workman was contested by the Mandali before the labour court by filing the written statement at Exh. 16 and it was pointed out that the petitioner was working as Jt.Secretary and has committed serious irregularities and, therefore, the petitioner workman was informed in that regard and that the petitioner workman had agreed to submit the resignation but subsequently, he turned down; that since the workman turned down and has not submitted the resignation and since the criminal case was lodged against the workman in respect of the irregularity, in the interest of administration, it was decided to terminate his service without attaching any stigma and, therefore, his services were terminated by simple termination order dated 18.10.1979 and as such, there was no need to initiate departmental inquiry against the workman and/or to issue the show cause notice to the petitioner workman. The respondent Mandali has asked for permission in case if the court comes to the conclusion that the inquiry is necessary and has prayed that in such event, an opportunity may be given to the respondent Mandali.

Before the labour court, the workman has filed affidavit on 13.9.1985 and that his evidence was not cross examined by the mandali and that no one has adduced any evidence on behalf of the Mandali. Ultimately, under its impugned award, the labour court has come to the conclusion that in view of the allegations/charge of irregularity, the petitioner workman was required to be given an opportunity and, therefore, under its award, the labour court has set aside the impugned order of termination. As regards back wages, the labour court has taken into consideration the fact that the order of termination related to the year 1979 and the dispute was raised in the year 1981 and was referred on 9.3.1982 and the statement of claim was filed on 1.9.1983 and, therefore, taking into consideration all these aspects of the matter, the labour court has not granted any back wages and has directed the respondent mandali to reinstate the petitioner workman in service with continuity of service but without back wages for the intervening period. Said

judgment and award of reinstatement passed by the labour court has been challenged before this court by the workman by filing the present petition.

This petition was admitted by this Court on 20.2.1988.

Learned advocate Mr. Desai appearing for the petitioner workman has pointed out that since the labour court has set aside the impugned order of termination as illegal, the labour court ought to have granted the back wages. He has submitted that the labour court has erred in not doing so without any cogent reason and, therefore, this petition should be allowed by directing the respondent mandali to pay the back wages to the petitioner workman for the intervening period.

I have heard the learned advocates for the parties. I have also gone through the impugned award. I have also gone through the papers produced before me.

Admittedly, the services of the petitioner were terminated on 18th October, 1979 in view of some irregularities allegedly committed by the petitioner workman while the workman was working as Jt. Secretary which has also considered to be the criminal offence and the petitioner workman has also given assurance to the respondent mandali to submit the resignation but subsequently he turned down. The order of termination is dated 18.10.1979 and the reference was made on 9.3.82 and the statement of claim was filed on 1st September, 1983 by the petitioner workman. In his evidence, the petitioner workman has admitted that he has worked for some time in another mandali and that he is also having some agricultural land. Taking into consideration all these facts and circumstances, I am of the opinion that the labour court is not justified in denying total back wages to the petitioner workman for the intervening period. Not only that, the respondent Mandali has remained absent and has not appeared before the labour court and has also not challenged the affidavit filed by the petitioner workman and has not held any departmental inquiry before the labour court. In view of these facts, the labour court ought to have award some back wages to the petitioner workman for the intervening period. The labour court has taken into consideration the entire period from the date of termination till the date of filing of the statement of claim. The labour court has also taken into consideration the other factors that after the termination, the petitioner had admitted that for the period of about one and half years, he was

gainfully employed in other mandali and that he is also having the agricultural land. Therefore, this would mean that barring the period of his gainful employment as stated by the workman in his evidence and keeping in view the agricultural land possessed by the workman, the labour court ought to have awarded some back wages for the intervening period. The labour court ought to have taken into consideration that the respondent has not proved gainful employment of the petitioner workman for the whole intervening period. The labour court has set aside the impugned order of termination on the ground of breach of the principles of natural justice. Therefore, taking into consideration the decision of the apex court reported in AIR 1979 SC pg. 75, in case of Hindustan Tin Works, the workman is entitled to the normal, natural and consequential relief of back wages and, therefore, taking into consideration all these facts and circumstances of the case, passage of time, I am of the opinion that it would be just and proper to award 50% of the back wages to the workman by modifying the award to that effect. The petitioner should be given 50% of the back wages from 1.1.1984 till the date of award i.e. 5.2.87. There was some delay in raising the dispute and, therefore, the petitioner workman is not entitled to any back wages for the period from the date of the impugned order till 31.12.1983 and, therefore, I am of the opinion that the petitioner is entitled to 50% back wages from 1st January, 1984 to 5th February, 1987. Accordingly, this petition is partly allowed. The respondent Mandali is directed to pay 50 % of the back wages to the petitioner for the period from 1.1.1984 to 5th February, 1987. The respondent Mandali shall pay the said amount of 50% of the back wages to the petitioner workman as expeditiously as possible, preferably within three months from the date of receipt of certified copy of this order.

15.10.1999. (H.K.Rathod,J.)

Vyas